

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

STEVES AND SONS, INC.,

Plaintiff,

V.

JELD-WEN, INC.,

Defendant.

Civil Action No. 3:20-cv-000098

**STEVES AND SONS, INC.'S MEMORANDUM IN SUPPORT OF
MOTION TO FILE ITS OPPOSITION TO MOTION TO DISMISS COUNTS ONE AND
TWO OF STEVES AND SONS, INC.'S AMENDED COMPLAINT
FOR FAILURE TO STATE A CLAIM UNDER SEAL**

Plaintiff Steves and Sons, Inc. (“Steves”), pursuant to Rule 5 of the Local Civil Rules, respectfully moves the Court for an order sealing portions of its Opposition to Motion to Dismiss Counts One and Two of Steves and Sons, Inc.’s Amended Complaint for Failure to State a Claim. In support of this motion, Steves states:

Local Rule 5(C), Section 1 -- Non-confidential description of the material filed under seal.

The material to be filed under seal consists of non-public information related to Steves' customers, which Steves regards as commercially sensitive, as well as of statements in the Opposition referencing this information.

Local Rule 5(c), Sections 2 and 3 -- A statement why sealing is necessary, references to governing case law, analysis of the appropriate standard, and a description of how that standard has been satisfied.

Sealing of the information and statements regarding the information is necessary because it is non-public data that Steves regards as commercially sensitive.

Documents should be sealed when a party's interest in keeping the information contained therein confidential outweighs the right of public access to judicial documents. *See, e.g., Stone v. Univ. of Maryland Med. Sys. Corp.*, 855 F.2d 178 (4th Cir. 1988); *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000). The United States Court of Appeals for the Fourth Circuit has directed that district courts should consider the following factors when determining whether to exercise their discretion to seal documents: (1) "whether the records are sought for improper purposes, such as promoting public scandals or unfairly gaining a business advantage;" (2) "whether release would enhance the public's understanding of an important historical event; and" (3) "whether the public has already had access to the information contained in the records." *Va. Dept. of State Police v. Wash. Post*, 386 F.3d 567, 575 (4th Cir. 2004).

Here, there could be an "unfair business advantage" gained by any party who had access to Steves' confidential information, which Steves regards as commercially sensitive. This is particularly true of Steves' competitors, including Defendant JELD-WEN. Additionally, the public has never had access to the information at issue and it is routinely kept in confidence in the ordinary course of business. These are appropriate grounds for sealing.

Local Rule 5(c), Section 4 – Statement as to the period of time the party seeks to have the matter maintained under seal.

Steves requests that the portions of the Opposition requested to be filed under seal should remain under seal indefinitely in the absence of a court ruling that the material is not confidential.

The Opposition sought to be filed under seal is being filed electronically with the Court contemporaneously herewith, as required by Local Civil Rule 5. A redacted version of the Opposition is being publicly filed.

Dated: April 20, 2020

Respectfully submitted,

STEVES AND SONS, INC.

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CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2020, I caused a copy of the foregoing to be electronically filed using the CM/ECF system, which will send notification to counsel of record of such filing by operation of the Court's electronic system. Parties may access this filing via the Court's electronic system.

By /s/Lewis F. Powell III
Lewis F. Powell III